IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2614 OF 2003

Mrs. Chandana Chakraborti ..Petitioner.
Vs.
M. L. Dahanukar College of Commerce & Ors. .. Respondents.

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Mr. Mihir Desai for the Petitioner.
Mrs. Modak for respondent Nos.1 and 2.
Mr. Mohan Naik, AGP for respondent Nos.4 and 5.

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CORAM : DALVEER BHANDARI, C.J.&
DR.D.Y.CHANDRACHUD, J.

26th October, 2004.

P.C. :

1. The petitioner joined the first respondent college as Lecturer in Environment Studies and was shown to have been appointed on a post earmarked as reserved for BC candidate. The petitioner's' appointment was for one year and came to an end on 25th April, 1995. The petitioner was again appointed to the said post for a period of one year in 1995-96. Thereafter the petitioner was again appointed on year to year basis against the post reserved for BC candidate.

2. The post of lecturer in Environment Studies in the first respondent college was continuously advertised as reserved for BC candidates and applications were invited from suitable candidates. However, no suitable candidate was available for appointment and hence, each year, the petitioner was appointed to the post on temporary basis. The petitioner filed a writ petition being Writ Petition No.1585 of 2000 before this Court. It came up for consideration before a Division Bench of this Court on 31st January, 2001. It is mentioned in the order that the petitioner has been continuously working since 18th July, 1994 with the first respondent. Now the petitioner has been continuously working with the first respondent for more than 10 years. In the Division Bench Judgment, the Government was directed to take decision on the proposal submitted by the college within 8 weeks from the date of the receipt of the proposal. The Government by order dated 28th November, 2001 wrote to the Vice Chancellor that it has been decided that the post cannot be dereserved. The petitioner was again compelled to approach this Court by way of this writ petition. This Court issued show cause notice and the matter was adjourned on various occasions on the request of the learned counsel for the respondents.

3. The learned Assistant Government Pleader submits that despite writing to the Joint Secretary, Higher Education, Government of Maharashtra, he has not received any instructions. In that letter he has clearly mentioned that "you must send the instructions immediately", but till date he has not received any instructions. This clearly demonstrate how the Government is casually treating this matter and ensuring no respect to the order of the Court or their own G.R. NO.BCC- 1094/CR-57/94/16-b dated 5th December, 1994 According to this G.R. If the posts reserved in the prescribed proportion for Scheduled Tribes remain vacant for want of availability of BC candidate, they shall not be filled for the next 5 recruiting years and efforts shall be made to obtain BC candidates of right categories to fill these vacancies. If, inspite of efforts, BC candidates of the right categories do not become available, then in the 6th year these posts shall be filled on an exchange basis explained as above. If in the 6th year no candidate becomes available belonging to either the category for which the post is reserved or the category with which exchange is admissible, then in the 7th recruiting year the post can, after obtaining permission of the General Administration Department, be filled

from among open category candidates.

4. In this case, the petitioner has now been continuously working on this post for more than 10 years. Despite the clear instructions of the Government, the respondent had failed to dereserve the said post. Despite number of opportunities, reply has not been filed. In this view of the matter, we are left with no option but to dereserve the said post in accordance with G.R. No.BCC- 1094/CR-57/94/16-b dated 5th December, 1994 and regularize the services of the petitioner from 18th July, 1994. We direct the Government to pass formal order in this matter within four weeks. In case the order is not passed, the concerned Secretary shall remain present in Court. No further directions are necessary. This petition is accordingly disposed of.

CHIEF JUSTICE

DR. D.Y. CHANDRACHUD, J.